



DREW & NAPIER

A Child's Voice in Custody Proceedings

WKM v WKN [2024] SGCA 1

16 February 2024

LEGAL UPDATE

In this Update

For the first time, the Court of Appeal in **WKM v WKN** [2024] SGCA 1 has set out clear guidelines on when and how judicial interviews should be conducted in order to ascertain a child's wishes and feelings, and the use of child welfare reports in child proceedings. In **WKM**, the Court held that it was in the best interests of the child for her to be given an opportunity to heal and rebuild her relationship with her Father without any interference from her Mother. The Court of Appeal therefore granted sole care and control of the child to her Father, whilst suspending access to her Mother in the interim.

Our update discusses these latest views by the Court of Appeal.

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INTRODUCTION

After considering the High Court Judge's judicial interview with a young child who was 11 years old, and having considered the child welfare reports tendered, the Court of Appeal in *WKM v WKN* [2024] SGCA 1 held that it was in the best interests of the child for her to be given an opportunity to heal and rebuild her relationship with her Father without any interference from her Mother. The Court of Appeal therefore granted sole care and control of the child to her Father.

BACKGROUND

The parties were married in February 2012 and an interim judgment of divorce was granted in December 2016. The parties were granted joint custody of their then four year old child, with sole care and control to the Father and liberal access to the Mother.

On 5, 7, 9 and 11 November 2021, the Mother lodged police reports alleging that both the Father and the helper of the Father's mother had abused their child physically, emotionally and sexually, and removed the child unilaterally from the Father's care.

On 23 November 2021, the Father sought: (a) an injunction to compel the Mother to return their child to his care, and (b) supervised access at the Divorce Support Specialist Agency ("**DSSA**") in the interim, pending a review after the Court receives a report from DSSA with regard to access to the Mother. The Mother applied for sole custody and sole care and control of their child.

The District Judge relied on three child welfare reports and concluded that there had not been any material change that would warrant a change in the custody arrangements and a reversal of the child's care and control. The District Judge ordered that the Father was to continue to have care and control of the child, while the Mother was to have dinner access on certain days and weekly overnight access from Friday to Saturday.

In April 2023, the Mother reported to the police that the child had engaged in self-harm and was sent to a hospital. The Mother then appealed against the District Judge's decision, seeking care and control of the child. The Father requested the Court to direct that further child welfare reports be submitted, which was denied. Both parties urged the Court to exercise its discretion to ascertain the child's wishes by conducting a judicial interview.

The High Court judge conducted a judicial interview of the child and allowed the Mother's appeal by reversing the order on care and control from the Father to the Mother, after noting that the child had expressed wanting to live with her Mother. The Father filed an application to the Appellate Division of the High Court for permission to appeal against the High Court judge's decision. This matter was then transferred to the Court of Appeal.

THE COURT OF APPEAL'S DECISION

The children welfare reports provided to the Court of Appeal revealed a picture of instability and conflict, and the Court was concerned with the negative consequences the Mother's conduct had on the child's life. The Mother went far beyond gatekeeping to wilfully carry out a campaign to damage the child's relationship with the Father. The Court of Appeal ultimately reversed the High Court's decision and granted sole care and control to the Father. The Court of Appeal also ordered that access arrangements for the Mother should take place in phases.

Judicial interviews, now also known as "Judge and Child" sessions, enable the Court to listen to and consider the children's views and concerns in granting orders relating to the children.

A judicial interview is one of many options that the court may employ to ascertain a child's wishes. Whether a judicial interview should be conducted must be made with sensitivity to the facts of the matter, including but not limited to the age, emotional and intellectual maturity of the child, presence of gatekeeping / alienation, general wellbeing of the child and consequences of the child in conducting such an interview, nature of dispute, stage of proceedings and availability of materials such as reports by social workers and mental health professionals.

KEYPOINT

The Court of Appeal held that the contents of a judicial interview should be assessed together with all other relevant information available to the judge, and any observations or conclusions about the child's views should be expressed sensitively by the judge conducting the judicial interview.

The Court of Appeal also underscored the importance of maintaining the confidentiality of judicial interviews and avoiding direct quotes from the child in grounds of decisions, in order to prevent the child from feeling responsible to prefer one parent or to reject the other. Child welfare reports should also be kept confidential to provide a safe environment for the child to express his views honestly and would therefore be in the child's best interests. This would prevent defensive reporting by child welfare officers, in which case such reports would be far less useful to the Court.

As child welfare reports are untested by cross-examination, they must be carefully considered by the judge. The Court may also seek clarification from the professional who had submitted the report or ask further questions in respect of the content contained in the report.

COMMENTARY

This case continues to highlight the Singapore Court's approach towards custody disputes, reminding parents of their parental responsibility to make decisions which are in the best interests of their children, thereby putting their children's interests and needs ahead of their own.

In cases where allegations of alienation / excessive gatekeeping have been made, the Courts remain sensitive to the possibility that the child(ren) have been coached or adversely influenced by either / both parent(s) to express certain views to the judge. Children involved in high conflict proceedings may also be vulnerable to external pressures / stressors arising from speaking with a judge.

Parents in dispute should consider their litigation strategy in mounting a request for their child to be interviewed by a judge, or if they should explore other avenues such as requesting for child welfare reports or seeking expert psychological opinions from a child professional who may be better placed to assess the child's needs.

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